IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 134 of 2007
With
CIVIL APPLICATION No. 8782 of 2007
In SECOND APPEAL No. 134 of 2007

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHMAD AHMADBHAI - Appellant(s)
Versus
FATMABEN ABDULLA & 7 - Defendant(s)

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Appearance :
MR SD SUTHAR for MR NK MAJMUDAR for Appellant(s) : 1,
MR EJAZ QURESHI for MR SHAKEEL A QURESHI for Defendant(s) : 1,
Defendant(s) : 2,4 - 6, 8.2.1, 8.2.2, 8.2.3, 8.2.5, 8.2.6, 8.2.8, 8.2.9, 8.2.10, 8.3.1, 8.3.3, 8.3.4, 8.3.5, 8.3.6,8.3.7 : SERVED
RULE NOT RECD BACK for Defendant(s) : 3, 8.2.4, 8.2.7,8.3.2
None appeared for Defendant(s) : 7 - 8.
RULE UNSERVED for Defendant(s) : 7.2.1,7.2.2

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 26/07/2007

ORAL JUDGMENT

This Appeal under Section 100 CPC has been preferred by the defendant no.3 in Special Civil Suit

No.57/2004 against the judgment and order dated 10th April, 2007 passed by the learned Additional District Judge and Fast Track Judge, Junagadh in Regular Civil Appeal No.107/2006.

The Appeal has been admitted on the following substantial questions of law :

> “(1) Whether the lower appellate Court has materially erred in law in not considering the contentions raised before it on merits and in dealing with the appeal perfunctorily and in dismissing the same without assigning any reason except that “the learned trial Judge has not committed any error in passing the judgment and decree” ?
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> (2) Whether the lower appellate Court has materially erred in law in not determining the extent of share of each of the parties to the suit in the suit property and in simply holding that each branch of the sharers shall have one-half share in the suit property ?”

With the consent of the learned advocates, the Appeal is heard and disposed of today.

The respondents nos.1 to 6, the plaintiffs, instituted Special Civil Suit No.57/2004 in the Court of learned Civil Judge (S.D.), Junagadh for partition of the suit property and for recovery of their share. The learned Civil Judge allowed the suit by the impugned judgment and order dated 16th September, 2006. The learned Civil Judge was pleased to declare that the plaintiffs and the defendants each had one-half share in the suit property and to pass preliminary decree accordingly. Feeling aggrieved, the appellants-defendants preferred the above referred Regular Civil Appeal No.107/2006 in the Court of Principal District Judge, Junagadh. The learned Additional District Judge and Fast Track Judge, Junagadh was pleased to dismiss the appeal. Therefore, the present Appeal.

Mr.Suthar has appeared for the appellant. He has

submitted that the lower appellate Court has materially erred in not framing the points for determination in accordance with Order 41 Rule 31 CPC. He has further submitted that the learned Fast Track Judge has failed to consider the matters at issue and has dismissed the appeal by recording his satisfaction as to the correctness of the judgment of the trial Court. The lower appellate Court, being the first appellate Court, was required to consider the matters at issue on the basis of the evidence on record and in light of the submissions made before it. Instead, the approach of the lower appellate Court has been perfunctory and superficial. He has also submitted that the Court below ought to have determined specific share of each of the parties to the suit.

In my opinion, Mr.Suthar is right. The appeal preferred before the lower appellate Court was one under Section 96 CPC. All matters at issue were at large before the lower appellate Court. Points for determination were required to be framed in accordance with Order 41 Rule 31 CPC and were

required to be considered and decided in accordance with law. Instead, the learned Fast Track Judge has recorded a mere satisfaction that **"...on going through the rival contentions and the findings on issue recorded by the learned trial Judge, I come to the conclusion that the learned trial Judge has rightly allowed the suit of the plaintiffs and this appellate Court has found no reason to make any kind of interference with the impugned judgment and decree."**

By no stretch of imagination the learned Fast Track Judge can be said to have performed his duty of deciding the appeal before him. The approach of the learned Fast Track Judge is perfunctory and contrary to the legal principles. To me, it appears that the learned Fast Track Judge has, in the wake of quick disposal, gone off the track. Instead of deciding the matter before him, the learned Fast Track Judge has merely disposed of the matter. The attempt appears to be that of bagging disposal rather than deciding the lis before the Court.

In above view of the matter, the impugned judgment and order dated 10th April, 2007 passed by the learned Additional District Judge and Fast Track Judge, Junagadh is quashed and set-aside. The Regular Civil Appeal No.107/2006 is remanded to the lower appellate Court for hearing and decision afresh in accordance with law. The lower appellate Court shall take care to frame points for determination in accordance with Order 41 Rule 31 CPC and Rule 414 of the Civil Manual. The parties shall bear their own cost. Civil Application stands disposed of.

The parties may move the lower appellate Court for early hearing of the appeal.

(Ms. R.M.Doshit, J.)

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